

REMARKS

In accordance with the foregoing, claims 12 and 33 have been amended. No new matter has been entered. Therefore, claims 12-28, 33 and 34 are pending and reconsideration is respectfully requested.

DOUBLE PATENTING:

In the Office Action, claim 27 and 28 were rejected under the judicially created doctrine of double patenting over claim 18 and 28 of co-pending application No. 10/737,837. However, it is respectfully submitted that since neither the present set of claims nor the claims in co-pending application No. 10/737,837 have been formally allowed, it would be premature to address the double patenting rejection at this time. See *MPEP 804(I)(B) and 804(I)(B)(1)*.

REJECTIONS UNDER 35 U.S.C. §103:

Claims 12-14, 17-28 and 33-34 are rejected under 35 U.S.C. §103(a) as being unpatentable over Morishita (U.S. Patent 5,976,729) in view of Watanabe (U.S. Patent 6,492,058) and as evidenced by Pedicini (U.S. Patent 5,188,909), claims 15 and 16 are rejected under 35 U.S.C. §103(a) as being unpatentable over Morishita and Watanabe as applied to claim 12 above, and further in view of Pedicini, and claims 12-14, 17-28 and 33-34 are rejected under 35 U.S.C. §103(a) as being unpatentable over Morishita, Watanabe and Pedicini in view of Takahashi (U.S. Publication 2001/0038938). These rejections are overcome.

Regarding the rejection of claims 12 and 33, it is noted that both claims have been amended to recite that the safety device is disposed at an exterior of the lithium battery. This recitation is supported by the original specification and FIGs. 3 and 4A and clearly establishes that the safety device is not only located outside of the claimed can, but also the battery itself. Applicants respectfully assert that none of the cited references alone or in combination disclose this aspect of the invention.

In support of this position, applicants note that all of the previous remarks are, at this time, incorporated herein, and set forth explanations as to why the suggested combinations of the references are improper. Applicants further note that these remarks establish that the outstanding rejections are traversed without the current amendments.

When taking the current amendments into consideration, however, the distinguishing features of the claims are even more clearly seen. Recalling that Watanabe is cited as providing a teaching that the safety device of Watanabe could be provided outside of the can, applicants

assert that it is unreasonable to suggest that Watanabe teaches that a safety device could be disposed at an exterior of the battery, as claimed. Indeed, although it could be argued that Watanabe discloses the protection circuit 3 as being located outside of the rechargeable cell 2, it is clear that the protection circuit is within the ultra-sonically welded case 1. In other words, Watanabe certainly does not disclose that the protection circuit is located outside of the ultra-sonically welded case 1, which appears to correspond to the claimed lithium battery. As such, Watanabe could not provide a teaching that a protection circuit could be disposed at an exterior of a lithium battery as claimed.

Therefore, since the other references do not teach and are not cited as teaching a safety device disposed at an exterior of a lithium battery, claims 12 and 33 are believed to be patentably distinguished over the combinations of the references. Thus, the rejections are overcome.

Regarding the rejections of claims 13-28 and 34, it is noted that these claims depend from claims 12 and 33, respectively, and that, therefore, these claims are also patentably distinguished from the combinations of the references. Thus, these rejections are also overcome for at least the reasons as set forth above.

CONCLUSION:

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited. Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 503333.

Respectfully submitted,

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